

# Police Prosecutor Update

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Our Supreme Court has announced a two-part test for determining whether a trash search is reasonable. First, the search must be based on an “articulable individualized suspicion that illegal activity is or has been taking place” before an officer can seize trash set out for collection. This is basically the same as is required for a “*Terry* stop” of an automobile. Secondly, the trash must be retrieved in substantially the same manner as the trash collector would take it. Reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than a preponderance of the evidence, but it still requires at least a minimum level of objective justification and more than a “hunch” of criminal activity. This requirement is satisfied when the facts known to the officer, together with the reasonable inferences arising from these facts, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur.

A recent case addressed the first of the two-part test. Detective Locke received a phone call from Detective Willy, who stated that a concerned citizen (Pryor) had advised him that the defendant was involved in the use and sale of cocaine in Locke’s city. Calling the telephone number given him, Locke spoke with Pryor, who provided his date of birth and social security number. Pryor agreed to speak in person with Locke. Before the meeting, Locke verified Pryor’s identity and discovered a fairly lengthy criminal record. Pryor told Locke where the defendant resided and also advised that his former girlfriend, Rhonda Thompson, sometimes stayed there. Pryor said that the defendant and Thompson had a cocaine problem and the defendant’s source for the drug. Pryor stated that the defendant would distribute cocaine to Thompson and others and that he had been in the defendant’s residence a month or two earlier and had seen cocaine.

Locke attempted to learn Pryor’s motive in an effort to rule out revenge or jealousy. Pryor insisted he wanted to try to end Thompson’s cocaine addiction. Locke verified that the defendant resided where Pryor said and matched the general description provided by Pryor. Based on Pryor’s information, Locke drove by the defendant’s residence and observed a trash can at the end of the driveway, set out to be picked up. Early the next morning, Locke and other officers performed a trash pull. Based on items found in the trash, they obtained a warrant to search the defendant’s residence.

The main issue on appeal was the reliability of Pryor’s information. Generally, an anonymous tip, standing alone, is not enough to provide reasonable suspicion. But a tip from an identified or known informant can provide the basis for reasonable suspicion if it contains “sufficient indicia of reliability.” One of the reasons for this is that a known or identified informant’s credibility can be assessed and he can be held responsible if his allegations are fabricated. There are two major types of informants, professional informants and cooperative or concerned citizens. With regard to citizen informants, these individuals generally come forward with information out of good citizenship and desire to assist law enforcement in solving crime. They are usually one-time informants and no basis exists from prior dealings to determine their reliability. Also, information of this type usually goes to completed crimes rather than future or continuing crimes. Pryor was not a professional informant.

While it was a close question, the court of appeals determined that Pryor’s information was reliable. Detective Locke was able to substantiate the gist of his assertions. Pryor supplied his name, date of birth, and social security number and thus, if he had supplied false information, he could have been held responsible for it. More importantly, because of his face-to-face meeting with Pryor, Locke could gauge first-hand Pryor’s facial expressions, composure, tone of voice, and sincerity. Although his criminal history was troubling, he did not try to cover it up. He did not evade any of the detective’s questions. Therefore, the trash search was reasonable.

Finally, it was also troubling that Pryor had observed cocaine in the defendant’s residence one or two months earlier. When drugs are involved, this is an extremely long time and would normally render this information stale. However, additional information established that cocaine would probably still be present in the residence. The defendant had an ongoing cocaine habit and also distributed cocaine in an ongoing practice.

Case Name: *Washburn v. State*, 868 N.E.2d 594 (Ind. Ct. App. 2007), *trans. denied*